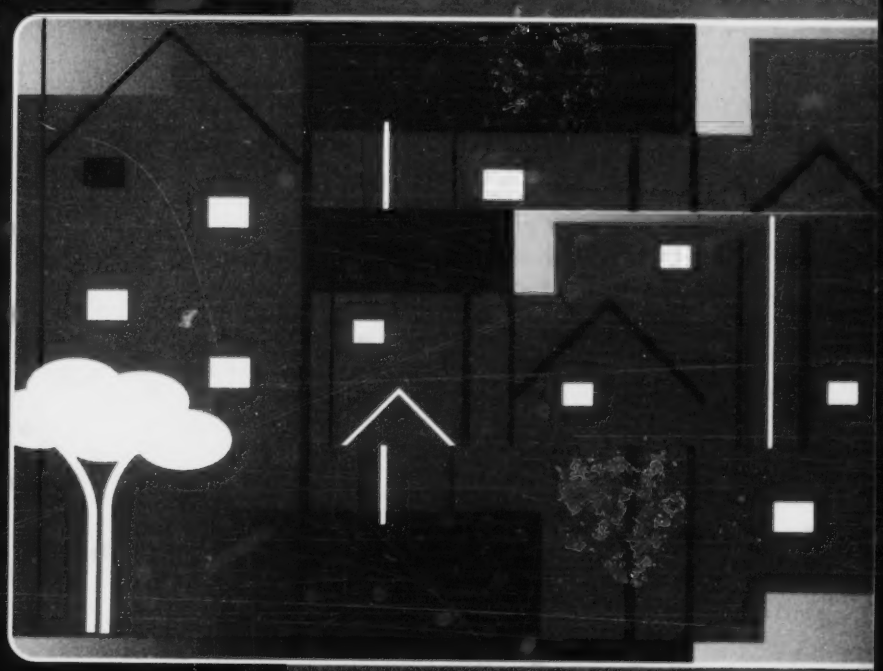
Ontario

Residential Tenancy Reform Consultation Paper



Spring 2004

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Message from Minister of Municipal Affairs and Housing John Gerretsen

Welcome to a discussion on the proposed reform of Ontario's residential tenancy legislation.

The Ontario government is committed to providing real and balanced protection for landlords and tenants, and encouraging the growth and proper maintenance of the stock of rental housing across the province. We understand that the strength of our communities in part depends on a healthy rental market.

Before proposing new legislation to achieve this goal, we will consult extensively with tenants, landlords and others affected by these issues to hear what they think. We are seeking input from the people of Ontario by holding town hall meetings and discussions with a wide range of community groups.

This discussion paper is an essential part of our strategy to obtain your suggestions and ideas on how to proceed.

I have asked my Parliamentary Assistant Brad Duguid to be my representative for these public consultations. He will travel across the province to hear your views on the ways we can make Ontario's rental housing market healthy and strong for both tenants and landlords.

With your help, our government is confident we can propose legislative reform to protect tenants and promote a healthy private rental housing market both now and in the future. This will help keep our communities strong and vibrant, and ensure that residents enjoy a quality of life that is second to none.

John Gerretsen

Minister

Message from Parliamentary Assistant to the Minister of Municipal Affairs and Housing (Urban) Brad Duguid

Minister of Municipal Affairs and Housing John Gerretsen has asked me to lead the dialogue between our government and Ontarians on ways to improve our rental housing market to ensure tenants have real protection and to encourage a healthy and vital rental housing industry. This is part of the Ontario government's plan to make Ontario strong, healthy and prosperous.

I look forward to touring our province, and listening to the views of tenants and landlords across Ontario.

This document contains a questionnaire that I encourage you to complete. It forms an important part of our dialogue with you, and provides you with an opportunity to make your views known directly to our government, as we move forward on our agenda of real, positive change for Ontario.

The discussion paper examines a number of areas where improvements are needed. These include rents charged to new tenants, adjusting rents based on utility costs, proper maintenance of a rental building, regional decontrol, rent deposits, dispute resolution, tenant and landlord rights, and the demolition and conversion of rental housing.

Our discussion will take us to communities where we can hear from as many people and organizations as possible. Town hall meetings will be held in the GTA (Central, East and West), Kitchener, Hamilton, London, Sudbury, Kingston, Ottawa and Thunder Bay.

I invite you to attend one of the public meetings, and provide your comments on this very important topic. Information regarding the dates and times of the meetings can be found on our website, www.rentreform.ontario.ca, and/or by calling 1-866-751-8082.

Thank you in advance for your participation in this process.

Brad Duguid

Parliamentary Assistant

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Introduction

Thank you for participating in the discussion on possible reform of Ontario's residential tenancy legislation.

The Ontario government has stated that it wishes to put forward new legislation that would protect tenants and encourage landlords to maintain and invest in rental housing. We want your input on this proposed legislation.

How to share your views with us:

1. Fill out the multiple-choice questionnaire electronically on our website: www.rentreform.ontario.ca. On this site, you can also read this consultation paper, download copies of the questionnaire in English, French or any of 10 widely spoken languages, and find up-to-date information about the consultation.
2. Mail or fax the questionnaire and/or written comments to:
   Residential Tenancy Reform Consultation
   Ministry of Municipal Affairs and Housing
   Market Housing Branch
   777 Bay Street, 14th Floor
   Toronto ON, M5G 2E5
   Phone: 416-645-8082 or toll-free 1-866-751-8082
   Fax: 416-585-7607 or toll-free 1-888-846-8832
3. Attend one of the many town-hall meetings that will be held across the province to express your views in person. Dates and locations can be found on the website, or by calling the phone number listed above.

Submissions must be received no later than June 15, 2004.

We want to know what you think. It is our responsibility to make sure the system works for everyone, and the Ontario government needs your ideas and visions. Tell us how to make it work.

Principles for change

The Ontario government has stated its intention to introduce legislation to repeal the current law, the *Tenant Protection Act, 1997*, and introduce a new bill that would provide real protection for tenants and, at the same time, ensure an adequate stock of rental housing.

We want to consult with Ontarians about how to develop proposed legislation to balance the interests of landlords and tenants. This consultation paper is a starting point for discussion on creating a fair system to address landlord and tenant issues in Ontario.

- We intend to introduce legislation that would bring back real rent control. If passed, this legislation would:
  - eliminate vacancy de-control, which allows unlimited rent increases when a tenant leaves;
  - keep rent controls in place whenever vacancy rates are below the threshold at which tenants have real choice;
  - apply rent control measures on a regional basis. The minimum threshold for lifting rent controls would include a vacancy rate requirement in excess of three per cent;
  - protect tenants in situations of high vacancy rates against landlords who attempt economic eviction by way of selective, excessive increases; and,
  - restructure procedural rules so that the process to file grievances and respond to eviction applications at the Ontario Rental Housing Tribunal is more fair and equitable to tenants.
- The proposed legislation would ensure that municipalities with low vacancy rates have the right to protect existing rental housing from unreasonable demolition or conversion to condominiums.

We want your views

This paper offers proposals for improving the existing system of rent and tenancy regulation. The discussion of each proposal includes options for implementation, important considerations and issues of concern, so that interested parties can have input on all aspects of the proposals.

The paper has been organized so that each of the key areas for consideration is contained in a separate chapter. These are:

- Rents for new tenants
- Rent increase guideline
- "Costs No Longer Borne" for utility costs
- Maintenance and rent increases
- Regional decontrol
- Interest on rent deposits
- Dispute resolution
- Making landlords and tenants aware of their rights and responsibilities
- Demolition and conversion

At the end of this paper is a multiple-choice questionnaire that corresponds to the chapters. Additionally, if there are any other issues you wish to raise or comment on, we encourage you to submit them. This questionnaire contains the key questions and possible solutions discussed in the paper. You may also submit a more detailed written submission.

We look forward to hearing from you.

Rents for new tenants

Under the current system, introduced by the *Tenant Protection Act, 1997* (TPA), most rent increases are limited by the annual rent increase guideline. However, when a rental unit becomes vacant, there is no limit to the amount of rent that can be charged to the new tenant. This is commonly referred to as "vacancy decontrol." When a tenant moves, he/she must choose from among vacant units that are "decontrolled" and which may be renting for considerably more than the tenant's existing unit.

Background:

The current system of vacancy decontrol allows the market to determine the rent for vacant units. It has been argued that:

a) this gives greater incentives for landlords to do capital work (such as major renovations and repairs) once a tenant moves out of a unit; and,
b) it results in higher returns to investors in rental housing, who are then more likely to build new rental properties.

However, it is also argued that vacancy decontrol creates an incentive for landlords to evict so that they can raise rents for the unit. As well, tenant advocates believe that vacancy decontrol has allowed rents to rise too quickly, resulting in an affordability problem.

The government proposes to eliminate vacancy decontrol and introduce a system to regulate the rents for new tenants. At the same time, in order to retain incentives for investors to build more rental housing, the government proposes to decontrol regions where high vacancy rates provide a natural protection against large rent increases (see chapter on Regional decontrol.)

Questions for consideration:

1. By how much, if at all, should a landlord be able to increase the rent when a new tenant moves in?

A. No increase. A new tenant should be charged the same amount as the previous tenant.

This option would address the concern that vacancy decontrol encourages landlords to evict existing tenants in order to raise rents. It would also help keep rents on vacant units affordable. In the short run, this option may not have a large impact, since in many areas of the province, rent increases have been low in recent years. However, this is not the case in all communities.

Further, this option might prove difficult for landlords who have not been charging the previous tenant full market rent. Some landlords, particularly small landlords, choose to charge tenants less than market rent — or at least not impose guideline increases — to avoid frequent turnovers. As well, some landlords argue that they wait until a unit is vacant to do capital repairs, and then charge the new tenant a higher but fair rent for the improved units (rather than applying to the Ontario Rental Housing Tribunal (the Tribunal) for an increase above the provincial guideline). It would also be necessary to consider how to determine the rents on units that have been vacant for a period of time.

B. A landlord should be able to charge a new tenant the same rent as the previous tenant, plus the increase allowed by the annual rent increase guideline.

This option would help maintain affordable rent levels for new tenants, while still allowing landlords to raise rents modestly. It gives landlords the opportunity to bring the new rent closer to market level. As well, compared to option A, this option would create greater incentive for landlords to maintain and improve rental units. However, this option might allow landlords to increase the rent for some units twice in the same year.

C. A landlord should be able to charge a new tenant the same rent as the previous tenant, plus any increases that the landlord was allowed to charge to the previous tenant but chose not to.

This would allow landlords to set the rent for a new tenant based on what they could have charged the previous tenant, had they taken all allowable rent increases. In other words, landlords could have the opportunity to catch up on missed rent increases when setting the rent for a new tenant.

This would provide more flexibility to landlords by allowing them to make up for missed increases, while still protecting existing tenants from large rent increases. This option might provide some incentive for landlords to improve a unit when it became vacant. It would allow a landlord to give an existing tenant a break from rent increases, without fearing the repercussion of a permanently depressed rent. This option might result in large rent increases on vacant rental units, if the landload had not regularly applied allowable rent increases.

2. When should the first rent increase for new tenants be permitted?

In the current system, upon entering into a tenancy agreement, a landlord and new tenant agree on the rent, and typically this rent cannot be increased for 12 months. It can be assumed that this would also be the case if allowing a limited increase for new tenants (options B and C), were implemented.

However, if landlords were not allowed to increase the rent when a new tenant moved in (option A and option C where the landlord has not missed previous rent increases), on what date should the first rent increase occur?

One option is to keep the existing rules and not allow an increase for 12 months after a new tenant moves in. This approach is the simplest for tenants to understand. However, if no rent increase is allowed when a new tenant moves in (option A), this could be a hardship for landlords who did not increase their rents for some time, or for landlords who have had a series of tenants staying less than 12 months. In both of these situations, the landlord would not have the opportunity to increase the rent at all for an extended period of time.

Another option is to allow a landlord to increase the rents not sooner than 12 months after the previous increase for that unit. Assuming that the landlord is required to give a tenant 90 days written notice of a rent increase (same as current situation), then the earliest a rent increase could be applied would be three months after a tenancy began. This could be confusing for both tenants and landlords and would complicate leases; the lease renewal date and the increase date would rarely be the same.

A third option is to set a province-wide "anniversary date" for all rent increases (i.e., January 1). This would be simple and predictable for both landlords and tenants as it would not be necessary to keep track of individual anniversary dates. However, since units currently have various anniversary dates, it could be initially disruptive to adopt a common date.

If rents for new tenants are regulated, then it must be considered how tenants would find out what the lawful rent is when they move in to a new unit.

3. How would new tenants find out what their rent should be?

A. It should be up to the new tenant to contact the previous tenant to find out how much they were paying for rent.

This system existed under previous legislation between 1975 and 1986. It was the responsibility of tenants to find out the previous rent, and if they believed the rent was unlawful, they could make an application to get their money back based on the evidence they had found.

One problem with this option is that it can be very difficult to locate previous tenants, particularly in larger cities where there tends to be significant migration. Tenants in these circumstances may have little recourse if they suspect they are being charged unlawful rents.

B. Landlords should have to tell the new tenants what the previous rent was.

This could be done by requiring landlords to give new tenants a copy of the last notice of rent increase (NORI) they gave to the previous tenant, or the prior lease, or some other stipulated legal document.

If a tenant believes their rent is unlawful, they would be able to use this information as written evidence in making an application to the Ontario Rental Housing (the Tribunal). A penalty could be imposed if the landlord did not comply with the requirement to give tenants this information. For example, the tenant could be permitted to withhold rent until the landlord provides this information.

If combined with options A or B from question 1 (no rent increase or only guideline increase allowed) this process would be relatively easy to administer, and both landlords and tenants could easily understand it. However, it would be more complicated for a landlord to demonstrate how catch-up increases they are charging (option C) are lawful.

C. The provincial government should keep a list of the rent in every apartment and rental house that the new tenant can use to look up the previous rent.

A third option is to require landlords to register their rents with the Tribunal. This would allow tenants to inquire about the lawful rent for their unit at the Tribunal and make an application if they believe that their rent is unlawful. It would be the landlord's responsibility to provide rent information to the Tribunal, which would then need to be verified with the tenant. A penalty could apply to landlords who failed to provide this information.

This type of system was in effect in Ontario from 1987 to 1998. While it provided a way for many tenants and landlords to check lawful rents, it was very costly to maintain due to the volume of data to be collected, interpreted and verified. There were significant backlogs and delays with the verification of the data that was registered.

A further consideration with this approach is how often landlords would be required to update this information. Under the previous registry system, the "maximum rent" (the rent charged on a starting date plus all allowable increases, whether or not the landlord had taken them) rather than the actual rent was tracked, which meant the landlord only had to register once. Currently, the concept of maximum rent does not apply to most units, and tracking actual rents would be extremely difficult to implement and enforce.

4. Should any class of rental accommodation be exempt from regulation of new rents (e.g., smaller buildings or luxury apartments)?

For some classes of rental housing, it may be less important to regulate the rents of new tenants.

For example, buildings of fewer than four rental units could be exempted from restrictions on how much rent new tenants can be charged. This could mean that people with basement apartments could rent them out at whatever rent they choose once an existing tenant leaves (same as current situation). As small landlords are less likely to be professional property managers skilled at setting rents to maximize their income, this may be appropriate.

On the other hand, the most affordable segment of the rental market tends to be the secondary rental market (rental units not specifically built for rental purposes). The secondary rental market includes basement apartments, duplexes and apartments over garages or stores. Demand typically outstrips supply in the most affordable segment of the rental market, which puts tenants at a disadvantage when negotiating rents with landlords.

It could also be considered whether to regulate the starting rents for new tenants who move into luxury rental units. It could be argued that tenants who can afford higher-end rental have sufficient housing options and do not really need the protection of rent rules.

5. Partial Exemption for New Units

Under the TPA, units built or first occupied after November 1, 1991 are exempt from most of the rent rules of the legislation. For these units, rent increases are not limited at all. However, just as for non-exempt units, rents cannot be increased more often than once every 12 months and landlords are required to give 90 days notice of a rent increase. (All rules related to evictions and security of tenure also apply to new units.)

This partial exemption for new units was first introduced under previous legislation to exempt new units for the first five years after they were built or first occupied. This exemption was continued in the TPA, with the exemption for units built or occupied after November 1, 1991, extended indefinitely. It is argued that exempting new units provides an incentive for developers to build new rental stock.

In some cases, this exemption has prevented rent control protection from being applied to tenants of units that are now up to 12 years old.

To be consistent with the government's desired objective to regulate the rents for new tenants, it will be necessary to consider how the new legislation should treat new units and units still benefiting from the 1991 exemption. It must be considered whether there should be an exemption from the rent rules for new units, and for how long this exemption should stay in place.

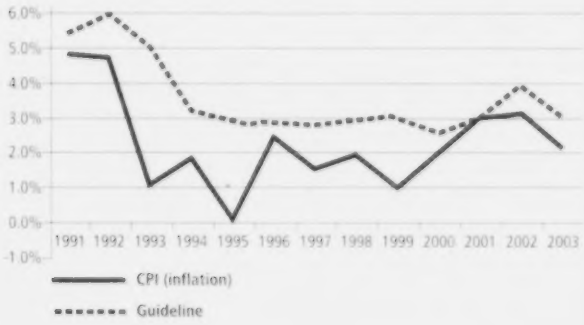
Rent increase guideline

The rent increase guideline is the maximum percentage by which landlords are generally authorized to raise rents without seeking approval from the Ontario Rental Housing Tribunal (the Tribunal). Many tenant advocates and others have maintained that the guideline is too high. Achieving the government's desired objective of strengthening rent controls requires an examination of how the guideline is calculated.

Background:

The rent increase guideline applies to most residential rental accommodation (excluding units built since 1991 and all social housing). The guideline is calculated by taking a base amount of 2 per cent and adding an amount that reflects the average increase in building operating costs. The *Tenant Protection Act, 1997* (TPA), sets out how the part of the guideline that is related to building operating costs is to be calculated. Every year the government publishes the Rent Control Index (RCI)[1], which is a three-year average of the increases in the eight operating costs that affect most landlords. Fifty-five per cent of the RCI is the amount included in the guideline, because that is the typical operating cost-to-revenue ratio for Ontario's apartment buildings.

Table 1: Rent Control Guideline and Inflation, Ontario



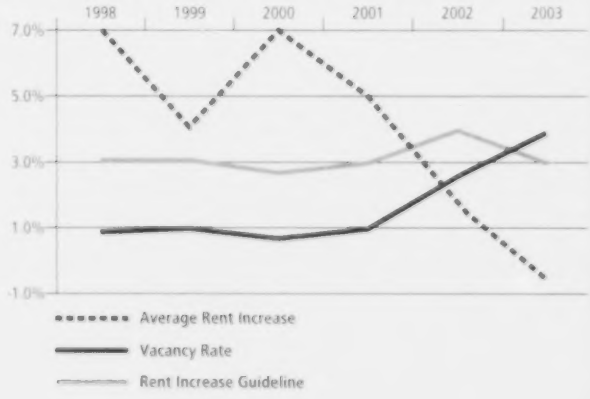
1. The eight costs measured are: heat, water, hydro, municipal property taxes, insurance, maintenance, administration and miscellaneous costs.

Since 1991, this calculation method has generally resulted in guidelines exceeding the rate of inflation, as indicated in Table 1. (In periods of high inflation, this formula would tend to result in guideline increases below inflation.)

The TPA does not specify what the 2 per cent base amount is for; landlords may argue that it provides a return on their investment in rental housing, while tenant stakeholders generally characterize it as a bonus for landlords. The 2 per cent base was established in 1987 when inflation was substantially higher (average inflation from 1988-1990 was over 5 per cent). Current inflation is approximately 2 per cent (average inflation from 1999-2003 was 2.2 per cent). The federal government and Bank of Canada have an inflation target range of 1-3 per cent, and monetary policy is aimed at keeping inflation at the 2 per cent target midpoint.

Increasing vacancy rates have made it more difficult for landlords to raise rents, and as Table 2 indicates, this has caused average rent increases for vacant units to be less than the rent increase guideline. Therefore, the rent increase guideline has had a limited role in determining rent increases in 2002 and 2003. In previous years, the rent increase guideline was lower than the average rent increases in vacant units in major cities, such as Toronto, Ottawa, Kitchener and Oshawa.

Table 2: Greater Toronto Area 1998 to 2003



Questions for consideration:

When the government is setting the limit for rent increases (the annual rent increase guideline) every year, how should that number be calculated?

A. Keep the current system of 2 per cent plus an amount for increases in building operating costs.

It has been argued that the current formula produces a guideline that is too high, and this erodes the affordability of rental housing. However, landlords may argue that a formula that produces a relatively high guideline generally allows them to maintain their properties and absorb operating costs.

B. Keep the current system, but reduce the base amount from 2 per cent to 1 per cent.

This option would result in guidelines that are close to the current rate of inflation. For example, if inflation remains at approximately 2 per cent, the guideline would be approximately 2 per cent. If inflation were higher, the guideline would be lower than the rate of inflation. For example, if inflation were 4 per cent, the guideline would be approximately 3.2 per cent.

C. Keep the current system, but remove the base amount altogether. Rent increases would be based only on increases in building operating costs.

This option eliminates the 2 per cent guideline base amount. Therefore, the guideline calculation would be based solely on 55 per cent of the average increase in landlord operating costs. If inflation remains at approximately 2 per cent, the rent increase guideline would be approximately 1 per cent. Therefore, the guideline would most likely remain below the rate of inflation.

For both options B and C, landlords may argue that rent increases will not be adequate to pay for increased costs, so it is likely they would need to apply to the Ontario Rental Housing Tribunal for above-guideline increases more frequently than under the current system. This measure may require significant administration for both the Tribunal and landlords.

D. Rent increases should be tied to the Ontario Consumer Price Index (CPI), which is the rate of inflation.

The CPI tracks changes in consumer prices for a basket of goods and services that is weighted based on typical consumer spending patterns. A rolling average over three years could be used. (This is the time frame used for the Rent Control Index.) This would help smooth fluctuations in the rate of inflation, thereby protecting tenants against large increases that may occur over a short period of time.

This option would tend to produce guidelines lower than the guidelines produced by the current formula (see Table 1, above). For example, the total CPI in Ontario for 2003 was 2.7 per cent, whereas the rent increase guideline was 2.9 per cent. The average CPI from 2001-2003 inclusive was 2.7 per cent, whereas the guidelines from 2001–2003 were 2.9, 3.9 and 2.9 respectively.

This option essentially uses the rate of inflation to set the rent increase guideline, which could be considered a fair method for both landlords and tenants. As well, the CPI is a widely accepted public indicator of price changes. However, the CPI measures hundreds of goods and services, whereas the RCI specifically measures landlord operating costs. The question remains whether to use the total CPI or the core CPI, which excludes eight components with the most volatile and fluctuating prices, such as gasoline, fuel, oil and natural gas.

With this option, if there were a spike in energy costs, the guideline would not increase as much as it does using the current calculation method, because energy is weighted less in the CPI compared to the RCI.

"Costs No Longer Borne" for utility costs

Landlords can apply to the Ontario Rental Housing Tribunal (the Tribunal) for an above-guideline increase (AGI) to increase the rent charged to tenants if their utility costs (heat, water and electricity) are higher than anticipated by the annual rent increase guideline calculations. However, if landlords' utility costs subsequently decline, the *Tenant Protection Act, 1997* (TPA) has no requirement for landlords to reduce the increased rent. This issue is commonly known as "costs no longer borne."

Background:

Under the legislation prior to the TPA, tenants could apply for a reduction in rent when utility rates declined. Landlords had to include information about their utility rates with notices of rent increase after an AGI had been approved.

The Ombudsman of Ontario initiated an investigation regarding AGIs for utility rates, and issued a preliminary report on October 24, 2002, which tentatively concluded that the TPA is unfair in this regard. The report said that the imbalance that occurs when tenants do not receive a rent reduction might have a "substantial negative impact on a large number of individuals in the province". The report also stated that "rent increases based on extraordinary increases in the rates for utilities are in accordance with a provision of a regulation that is unreasonable and improperly discriminatory." This investigation was prompted by a 2001 rate increase of 42 per cent for natural gas, and a decrease of 23 per cent in 2002. Tenant advocates are critical that the legislation does not contain a "costs no longer borne" provision.

Questions for consideration:

What should be done to protect tenants from continuing to pay higher rents when utility costs decrease?

A. Allow AGIs based on utility costs to be charged for one year only, unless the landlord can prove to the government that the utility costs have not decreased.

This option directly benefits tenants who can be assured that they will not pay extra costs unnecessarily. However, because utility costs generally do not decline unless there has been a spike in rates, it may be excessive to regularly require landlords to demonstrate that rates have not decreased, a measure that requires significant administration for both the Tribunal and landlords.

Another consideration is the type of proof the landlord would have to provide to the Tribunal, i.e. whether another full AGI application would be required. Furthermore, it must be considered how many years would landlords have to justify that their costs have not decreased, before the AGI amounts could remain permanently in the rent.

B. Allow AGIs based on utility costs to remain in the rent, but give tenants the right to apply for a rent reduction if these costs decrease.

This approach might be more efficient than the first option because tenants would only need to file applications with the Tribunal if utility costs have decreased, which does not occur very often. However, how will tenants know whether utility costs have decreased? They could be required to seek the information from utility providers, or landlords could be required to give tenants the information. If the latter option were chosen, how long would landlords be required to give this information, and when and how would they be required to do so.

A further consideration for both options A and B is whether landlords whose costs decreased because of investment in energy conservation measures should be exempted from requirements to reduce rents accordingly. If not, there could be a disincentive for landlords to implement such measures.

C. Have the government through the Ontario Energy Board keep track of utility rates, and if these go down, announce a decrease in rents affected by AGIs based on utility costs.

In this option, the government would track changes in utility prices over a period of time, and if the market price remained the same, AGIs for utility costs automatically would remain in the rent. If these decreased by a certain amount, landlords whose rents had recently increased as a result of an AGI for utility costs would be required to reduce rents accordingly. If a tenant believed that a landlord had not reduced rents by the correct amount, they could file an application with the Tribunal.

This option offers the benefit of not penalizing landlords who implement energy conservation measures; because landlords would only have to reduce rents based on the market rate and not on their actual costs. Another benefit is that, like the second option, this option eliminates the need to file applications in years when utility costs have not decreased.

However, some may find it unfair that the basis for removing an AGI is a general price change and not the costs of a particular building. Further, if there were a decline in consumption in a particular building after an AGI were granted, this would not cause the AGI to be removed. This approach, unlike the other options, means that a drop in consumption will not always lead to a rent reduction. However, this option does still address the Ombudsman's concern based on the spike in utility costs in 2001; if the rate of utilities drops, tenants should no longer have to pay the extra costs.

Costs No Longer Borne — Capital Expenditures

A related issue is whether costs no longer borne rules should apply to AGIs for major renovations and repairs (capital expenditures). The TPA does not include rules to remove these increases when the capital expenditure has been paid for.

Landlords have to apply to the Tribunal for an AGI for capital expenditures. Typically, an application will cover a number of different items, from new carpets to concrete repairs. Under the TPA, the tenant's rent increase to pay for these capital expenditures does not pay for the work in one year. Instead, the tenant's rent increase usually pays for the work over 5-25 years, based on the expected useful life of each item (the amortization period). However, the rent increase is not taken out of the rent when the item has been paid for after the amortization period.

Previous legislation did include rules for costs no longer borne for capital expenditures. When the useful life of each capital expenditure item was over, the government was required to provide a notice to the tenant that their rent was reduced so that the tenant no longer paid for that item.

There are drawbacks to introducing costs no longer borne rules for capital expenditures. Since each item included in one AGI can have a different useful life, there could be many rent reductions (some for very small amounts) over many years arising from one application. Many items would result in rent reductions after 20 or 25 years, at which point the reduction would likely be a surprise to both the landlord and most tenants, particularly tenants who moved into the building after the initial application 20 or more years earlier. There could be further complications where additional AGIs for capital expenditures, made in future years, overlapped with the earlier application.

Rules requiring the removal from rents of amounts relating to capital expenditures after their amortization period has expired would be complex for both tenants and landlords, and, in most cases, major reductions to rents would not take place for a long time.

Maintenance and rent increases

Landlords are required to keep rental buildings in a good state of repair, and they must comply with health, safety, housing and maintenance standards. When landlords do not comply with these requirements, the well-being of tenants can be jeopardized. Should landlords be allowed to raise rents if rental buildings are inadequately maintained, and what penalties should be imposed on landlords who do not meet these responsibilities?

Background:

It is generally the responsibility of municipalities to enforce building standards. Inspections are conducted upon tenant request, and inspectors will enforce standards by issuing work orders. Tenants can also apply to the Ontario Rental Housing Tribunal (the Tribunal) for remedies including an order requiring the landlord to make repairs, or for an abatement of rent (a return of rent charged during the period when maintenance was inadequate).

In previous provincial legislation, if landlords did not comply with a work order within a specific period of time, they were issued an Order Prohibiting a Rent Increase, and could not increase the rent until the work was done. The *Tenant Protection Act, 1997* (TPA) removed this provision from the legislation.

Tenant advocates and others maintain that there should be penalties for landlords who do not comply with work orders. Data from the City of Toronto shows that since 2001, when landlords were told to take immediate action, it took an average of five months and in some cases as long as two years for landlords to make the repairs and have the orders cleared by inspectors.

Questions for consideration:

What should be done if landlords fail to properly maintain rental buildings?

A. Do not allow any rent increases if a landlord has not complied with a work order.

With this option, landlords would not be allowed to raise rents at all for those units with outstanding work orders. If the work order were for a common area in a building, then the prohibition would apply to all units. This could be done without the Tribunal issuing orders prohibiting rent increases; tenants would have the automatic right not to pay a rent increase if there were an outstanding work order.

An advantage of this option is that it provides some compensation for tenants who are required to live in sub-standard conditions. However, it is possible that without the revenue generated from rent increases, some landlords would not have the funds to make the necessary repairs. This could result in a downward slide in the quality of building standards, leading to worsened conditions for tenants.

B. Do not allow any above-guideline *rent increases (AGIs) if a landlord has not complied with a work order.*

When landlords have incurred extraordinary operating costs, an increase in security costs, and/or done major capital expenditures, they can apply to the Tribunal for a rent increase above the annual guideline.

With this option, landlords would not be eligible to receive an AGI if there were an outstanding work order. Before receiving an AGI, landlords could be required to sign an affidavit that they had no outstanding work orders. In addition, tenants could be allowed to submit copies of outstanding work orders in order to have an AGI application discontinued, or delayed until the work was done.

This system could be designed so that any outstanding work order would render an AGI disqualified, or only those orders that an adjudicator considered to be serious.

This option is relatively easy for tenants and landlords to understand and apply, and could be considered fair to both parties. Tenant groups have stated that it is unfair for landlords to increase rents above the guideline when they have not complied with work orders. With this option, landlords would be encouraged to maintain their buildings, but would not be denied the annual rent guideline increase, which could provide the necessary revenue to conduct outstanding repairs.

For both options A and B, municipalities have different systems for issuing work orders: some have the resources to be proactive; others do not. If a municipality were very late in lifting a work order, unfair penalties might be applied to the landlord. The government might not be able to ensure that these options were implemented equitably across the province.

C. *Expand what the Ontario Rental Housing Tribunal can order a landlord to do when a tenant reports inadequate maintenance.*

Currently, if the Tribunal determines that a landlord has breached the obligations for adequate maintenance, it can order various remedies. These include requiring the landlord to make repairs, pay the tenant an abatement of rent or compensate the tenant for the cost of repairs or damage to tenant property. With this option, the list would be expanded to include orders such as prohibitions of rent increases until repairs are made and in serious cases, a permanent reduction in rent.

This option addresses the maintenance concerns of tenants, whether or not the municipality has issued a work order. With this option, varying degrees of municipal by-law enforcement would be of less concern. However, this option does not directly address the issue of non-compliance with work orders.

This option could be implemented in conjunction with option A or B.

Regional decontrol

To stimulate the production of new rental housing, and to encourage landlords to invest in the maintenance of existing rental stock, the government will explore ways to remove rent controls in regions with sustained high vacancy rates. This is known as "regional decontrol."

The government recognizes the importance of consulting on how this initiative could be implemented and has stated that, at a minimum, rent controls should not be lifted in a region unless there are sustained high vacancy rates of at least 3 per cent in all income categories. The government's proposed goals for regional decontrol are to give developers an opportunity to "build their way out of rent controls" while ensuring that, in regions where it is necessary, both existing and new tenants are protected by full rent controls.

Background:

When consumers have many choices, suppliers must price their goods or services more competitively. This holds true in the rental market – when more rental units are available, landlords typically keep rent increases to below those permitted under rent controls and may forego increases or even reduce rents. High vacancy rates tend to have the same effect as rent controls in protecting tenants from excessive rent increases.

Rent controls were first introduced in Ontario in 1975. Rent increases for most privately-owned rental units have been limited by rent controls since then. While exemptions from rent controls have existed for certain types of rental buildings, there have never been exemptions based on local vacancy rates.[2]

There are issues with existing vacancy rate data to consider before undertaking a major new initiative such as regional decontrol based on that data. Vacancy data compiled by Canada Mortgage and Housing Corporation (CMHC) are currently the most reliable and extensive, but there are limitations. CMHC reports on purpose-built rental units within buildings with three or more rental units; the secondary rental market is not counted. The secondary rental market includes a significant number of units: accessory apartments in family homes such as basement apartments, apartments over garages and stores, rented condominiums, and rented houses and duplexes. This part of the market helps meet demand for rental housing, providing up to 40 per cent or more of all rental units within some areas. The secondary rental market is also important because many of its units are the most affordable types of rental housing.

As the government wants to ensure that vacancy rates in each segment of a local market — low, moderate and high end — are above at least a 3 per cent threshold before decontrolling a region, more analysis must be done in order to make a decision based on vacancy data that recognizes the secondary market. Unfortunately, it is very difficult to get information about the secondary market. The sector is informal and many units are not officially on the market. There are also a high number of illegal or unreported apartments in this sector.

CMHC data is also limited because they do not include rental units in municipalities containing fewer than 10,000 residents. This means that vacancy rates are not available for about one-third of Ontario's 447 municipalities.

The government could develop its own data sources and statistics. These could be used to develop a more comprehensive vacancy rate measure to implement regional decontrol. Although this may entail significant start-up and ongoing costs, the government would like to receive suggestions for how this information on the secondary market and smaller municipalities could be obtained. The government is interested in your input on how this data could be accurately collected. Another approach could be to research whether CMHC data could be extrapolated as a reasonably accurate reflection of the secondary market.

2. At present, buildings built or first occupied since November 1991 are exempt from rent control.

Regional decontrol could create boundary issues. For example, if one region were decontrolled and a neighbouring region were not, it might be unclear to landlords and tenants on the "borders" whether or not they were controlled by rent regulation. Tenants on the decontrolled side of a border would have an increased interest in moving to the controlled side. Landlords on the border of a decontrolled region might find themselves with an even greater number of vacancies than the already high number, which had led to the decontrol in the first place. Creating the regional areas to incorporate continuous urban regions regardless of municipal boundaries could resolve this issue.

Questions for consideration:

1. In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?

The government is seeking input on whether 3 per cent is an appropriate threshold, or if it should be higher.

A. The threshold should be 3 per cent.

A vacancy rate of 2-3 per cent is most often cited in Canada as a healthy vacancy rate, so this could be an appropriate threshold for decontrolling a region. Using this threshold could mean that many municipalities would be decontrolled, including major urban centres such as the City of Toronto.

B. The threshold should be higher than 3 per cent.

Fewer regions would be eligible for decontrol.

2. In addition to the vacancy rate, what factors should be considered in determining whether a region is decontrolled?

Sustainability – How long would a specified vacancy rate continue before a region was decontrolled? In some regions, vacancy rates would be above the threshold one year and below it during the next year. It would be disruptive for landlords and tenants to have rents decontrolled one year, re-controlled the next and decontrolled the subsequent year. As well, constant change in the status of a region might actually discourage new rental housing by creating uncertainty for investors.

Higher vacancy rate on affordable units – Should the vacancy rate criteria for the low end of the market be higher than the vacancy criteria for the rest of the market before regional decontrol is implemented? Current vacancy data in key areas show higher vacancy rates in the lower rent levels of units that were studied. However, more typically, vacancy rates ease up for the higher rent units while the market stays tight for the lower rent units. To ensure adequate supply and price control for the more affordable class of units, the criteria to decontrol could include a higher vacancy rate for lower rent units than moderate and high rent units.

Percentage of tenants living in core need – CMHC considers individuals and families to be living in "core need" if they must spend more than 30 per cent of their income on rent for a "suitable, adequate and median rent unit in their community." When vacancy rates are high, there may still be a significant number of tenants living in core need. The core need data are not yet available from the 2001 census. However, a similar piece of data is the percentage of tenants spending more than 30 per cent of their income on rent. For example, in Sudbury, the vacancy rate was 5.7 per cent in 2001, yet the number of tenants spending more than 30 per cent of their income on rent was 44 per cent. This demonstrates that higher vacancy rates do not necessarily ease housing affordability problems. So perhaps one of the criteria that a region should meet before being decontrolled is that no more than a certain percentage of tenants should be living in core need.

Low average rent increases – Should the average rent increase in a region be considered before regional decontrol is implemented? This would help ensure that the region does in fact have only modest rent increases. When vacancy rates are high, landlords usually limit rent increases

to ensure that they can attract and retain tenants. Sometimes, however, a rental market can take a longer time to adjust to higher vacancy rates. In such circumstances, tenants might face significant rent increases, despite high vacancy rates.

The government is looking for input on whether any or all of these factors should be considered and, if so, what the thresholds should be.

3. Who should decide whether a region should be decontrolled?

A. The Province would determine the criteria for whether a region should be decontrolled and then declare certain regions decontrolled based on that criteria.

This option would help ensure that criteria were applied consistently for each region of the province. However, not involving municipalities in the decision-making process might result in a region being inappropriately decontrolled, due to specific local circumstances.

B. Municipalities should be given the authority to determine if a region should be decontrolled, but only if the region meets provincially established criteria.

In this option, municipalities, which are responsible for administering social services, such as welfare and social housing, would examine local circumstances and decide whether the region should be decontrolled (assuming that the municipality met the provincial criteria.) As municipalities might have a better understanding of local housing needs, it might be appropriate for them to assume this responsibility.

However, this could also be seen as the government sidestepping its responsibility to deal with this issue. Municipalities might resent being subjected to pressure to decontrol from local landlords and developers.

4. Under what circumstances could a region become "recontrolled"?

If regions are to be decontrolled when vacancy rates and other factors meet sufficient thresholds, then how and when can a region be "recontrolled" should those conditions cease? It would be simplest if a region were automatically recontrolled as soon as the prescribed conditions ceased. However, investor uncertainty would be heightened if a decontrolled region could fall back under control in a relatively short period of time. If there were no guarantees about how long decontrol would last for a region, then decontrol might not act as an incentive to build more rental housing. It would be necessary to consider how long a guarantee of decontrol should last. Periods such as 3, 5 or 10 years might be reasonable to consider.

5. If a region is decontrolled, what rent rules should be eliminated?

It is assumed that, in any regional decontrol situation, the following matters would still be regulated:

- Rights and responsibilities of landlords and tenants, i.e., privacy and entry into the unit, responsibilities regarding maintenance, assignment and subletting rules.
- Security of tenure and the termination of tenancies, i.e., legal ways for landlords and tenants to terminate a tenancy and grounds for applications to evict.
- Security deposits, rent receipts, post-dated cheques, and notice provisions (i.e., the landlord can only increase the rent once every 12 months and is required to give 90 days written notice of a rent increase).
- Procedural matters relating to the Ontario Rental Housing Tribunal (the Tribunal) and the processing of applications.

In this context, which of the remaining rent rules should be eliminated in a decontrolled region?

A. Eliminate rules around rents for new tenants, the annual rent increase guideline and above-guideline increases.

This would allow landlords to charge any rent that the market would allow, as they could set rents for new and existing tenants, without restriction.

This would provide more incentives for landlords and developers to invest in rental housing.

B. Eliminate rules around rents for new tenants, but keep rules around the annual rent increase guideline and above-guideline rent increases.

In this option, landlords in decontrolled regions could set any rent for a new tenant. However, once a tenant moved in, the guideline and all other existing rules would still apply.

Given that rent increases tend to be limited in regions with high vacancy rates, this option might not be overly restrictive for landlords. Further, landlords would have the freedom to renovate a vacant unit and charge a new rent based on the desirability of the improved unit, or catch up on missed increases when a new tenant moved in. At the same time, this option means that existing tenants would not experience excessive rent increases. In addition, tenants would not face the risk of "economic eviction." (See below.)

6. On what grounds should tenants in a decontrolled region be able to challenge a large rent increase?

When rent controls are lifted, there might be some tenants who would need protection from landlords who attempted "economic eviction"— when the rent is increased to the point that tenants have no choice but to move out because the rent is unaffordable.

Tenants in decontrolled regions could be given the right to file an application to the Tribunal if they felt their rent were unfair. Some possible grounds a tenant might use to challenge a rent increase could be:

- the tenant believes that the increase is a direct result of the tenant attempting to enforce their rights, for example, by forming a tenant association or requesting to have a work order issued for poor maintenance;
- the proposed rent greatly exceeds the market rent for the region; and,
- the proposed rent greatly exceeds the rents for similar units in the same building.

Interest on rent deposits

Landlords who collect rent deposits must pay tenants 6 per cent interest on the deposit each year. The 6 per cent rate is considerably higher than current inflation rates, and landlords have maintained that it is too high.

Background:

Landlords are permitted to collect rent deposits from tenants before they move in, as a way to protect against rent arrears. Deposits cannot be more than one month's rent, or, if rent is paid weekly, one week's rent. Deposits can only be used for the last month or week of the tenancy. They cannot be used to pay for repairs or for any other reason. When the rent is lawfully increased the deposit can also be increased by the same amount.

The 6 per cent interest rate has not changed since 1975, when landlords were first required to pay interest. At the time, 6 per cent closely matched inflation, and so it acted to protect tenants from seeing the value of their deposits erode. However, inflation is now significantly lower; for example, the average inflation rate in Ontario from 1990-2003 was 2.2 per cent.

Table 1: Inflation in Ontario

Average:	1990-2003	2003
	2.2%	2.7%

Source: Bank of Canada and Statistics Canada data.

Another measure of whether the interest landlords are required to pay on rent deposits is reasonable, is how closely it approximates the expected rate of return on investment. In other words, if tenants were not required to pay the deposit to the landlord, they could invest this money. What return on their money could they reasonably expect? One common type of low-risk investment is the Guaranteed Investment Certificate (GIC). Three percent is in between the current GIC rate and the average GIC rate since 1990, as indicated in Table 2.

Table 2: GIC Interest Rates of Return

Average:	1990-2003	2003*
	4.7%	1.7%

Source: Bank of Canada and Statistics Canada data.
GIC rates are for 1 year GICs
*until November, 2003

Questions for consideration:

What interest rate should be paid on rent deposits?

A. Change the interest rate paid on rent deposits to a fixed rate of 3 per cent.

This figure is fairer for landlords and more closely reflects current economic conditions, as 3 per cent is closer to the current rate of inflation. It is expected that the rate of inflation will be stable for at least the next few years, as the federal government and the Bank of Canada have agreed on a 1-3 per cent target range for inflation until the end of 2006, and monetary policy will be aimed at keeping inflation at the 2 per cent target midpoint.

The advantage of a fixed rate of 3 per cent is that it is close to both the average rate of inflation and the average rate of return on investments. The fixed nature of the rate (compared to a variable rate) means that it is easy for landlords and tenants to understand and apply.

B. Keep the interest rate paid on rent deposits at a fixed rate of 6 per cent.

The existing 6 per cent interest rate is well known and understood by landlords and tenants. However, it is higher than both the inflation rate and the rate of return for common types of investment, and may no longer be appropriate or fair.

C. ***Change the interest rate paid on rent deposits to a variable rate that is based on the rate of inflation, or on the interest rate on a common type of investment such as a GIC.***

A variable rate would be based on either the yearly inflation rate, or the yearly interest rate for a common investment type such as GICs. The government would announce the rate on an annual basis.

This option would be consistently fair to both landlords and tenants, as the interest rate paid by landlords would closely reflect the economic climate at any point in time. However, this rate could be more confusing than a fixed rate, because the number would change each year.

Dispute resolution – default process

The Ontario Rental Housing Tribunal (the Tribunal) resolves disputes between landlords and tenants and its decisions have a significant impact on the parties involved. Developing procedures that are fair and workable for both landlords and tenants is a priority for the government. Below are some areas under consideration for reform.

Background:

Most applications to the Tribunal are for eviction. For most types of eviction applications, the Tribunal may issue a default order if the tenant does not file a written dispute. When a landlord files an application with the Tribunal to evict a tenant, a hearing is scheduled. The landlord then serves a copy of the application and the notice of hearing to the tenant. However, if the tenant does not file a written response disputing the application with the Tribunal within five days, the Tribunal can cancel the hearing, and issue a default order evicting the tenant, based on the details of the landlord's application.

This default order stands unless the tenant requests that it be "set aside" within 11 days. If the tenant requests a set aside, a hearing is scheduled. The tenant must first demonstrate that there was a valid reason why he/she did not dispute the original application on time before the order will be changed.

This process applies to most eviction applications, and to some tenant applications, such as applications for illegal rent or illegal charges.

A large percentage of tenants (approximately 70 per cent) do not respond to eviction applications, or show up at hearings. Without a default process, hearing time has to be scheduled for all cases, even though often the tenant will not attend. Requiring a written dispute to be filed ahead of time speeds up the process and reduces costs.

This process has been strongly criticized by tenant advocates and the Ontario Ombudsman. They argue that the process is confusing to tenants, that the five-day dispute deadline is too short, and that denying tenants hearings in these cases is unfair. Tenant advocates have also argued that the "set aside" process is unfair.

Questions for consideration:

How can the dispute resolution process be made fairer?

A. Remove the default process.

The government is considering ending the default process altogether by removing the requirement for tenants to dispute in writing in order to have a hearing on an application. Instead, a tenant would automatically have the opportunity to attend a hearing when the landlord filed an application to evict them. This would remove the need for the Tribunal to inform tenants and landlords about the default process, and about the fact that the hearing might be cancelled if the tenant fails to dispute the application.

However, sending all applications to hearing would mean the Tribunal would take several days longer to issue most orders. In cases of arrears, this would increase the amount of rent owed to landlords. As well, landlords would be required to appear at all hearings, even in cases where the tenant had no intention of participating, costing the landlord extra time and expense. Finally, removing the default process would increase the costs to the Tribunal to resolve applications.

B. Make changes to the default process, such as giving tenants longer than five days to respond, allowing tenants to respond by phone or e-mail (instead of only in writing) or giving tenants more opportunities to argue against the eviction order.

Another option is to keep the default process, but change it to make the process simpler and fairer for tenants.

Lengthening the five calendar day deadline to dispute an application could make the process more accessible for tenants. For example, the deadline could be changed to five business days, which would ensure that weekends and holidays would not reduce a tenant's opportunity to dispute, or the deadline could be doubled to 10 days. However, for both these changes, extending the time to dispute might be seen by landlords as an unnecessary and costly delay to the resolution of their applications.[3]

Tenants could also be given more ways to file disputes. For example, the Tribunal could receive disputes filed by e-mail or even by telephone.

The "set aside" process could be changed to allow an adjudicator to consider the merits of the tenant's case without first requiring the tenant to demonstrate why they were unable to respond to the landlord's application. This would provide for a default process for uncontested applications, but would allow any tenant to participate in the set aside process if they disagreed with an order. However, this option might allow tenants to extend the eviction process even where the extension was not justified.

It should be noted that options A and B would also relate to other applications that are subject to the default process. These include tenant applications for issues such as illegal rent.

3. Under the current process, it takes at least 31 days from the date a landlord first takes action against a tenant for arrears to the date the tenant is required to move out of the unit. This does not take into account that weekends may cause further delays. If the tenant requests that the order be set aside, this will delay the final order by at least several days. If the landlord is required to have the order enforced by the sheriff (because the tenant will not move out voluntarily) this may take several additional weeks.

   The process is as follows: When a tenant falls into arrears the landlord must first give the tenant a Notice of Termination giving 14 days to pay in full or vacate the unit. If the tenant does not pay or vacate the unit, then after the 14 days have passed, the landlord can file an eviction application with the Tribunal. If the tenant does not dispute the application, the earliest the Tribunal can issue a default order is six days later (although this process typically takes a few days longer.) The default order gives the tenant 11 days to pay to void the order, or file a request to set aside the order.

Dispute resolution – notification of hearing

Background:

Under earlier tenancy legislation, the *Landlord and Tenant Act*, which was administered by the Courts, the applicant was always required to serve the notice of hearing on the respondent. However, at the same time, applications dealing with rent regulation matters were dealt with by the government, under the *Rent Control Act*, and the government was responsible for serving notices of hearing on respondents. During this program, application volume was low, and hearings were not scheduled until some time after an application was filed. Mailing the notices to all parties was not a major task, since the notice had to be mailed to the applicant anyway.

Requiring the applicant to serve the notice of hearing on the respondent was adopted under the *Tenant Protection Act* (TPA). To safeguard against times when the applicant did not serve the respondent, the *Act* provided that a respondent might request that a default order be set aside if they were unable to participate in the application. Under the current process, hearings with short time frames are scheduled on the spot when the applicant files the application. Applicants leave the Ontario Rental Housing Tribunal (the Tribunal) offices with their notice of hearing and, in many cases, serve them personally on the respondent much more quickly than the Tribunal could mail them.

However, the Tribunal frequently receives complaints from respondents who claim that they have not received an application or notice of hearing from an applicant. Tenant advocates argue that service of the notice of hearing should not be left to the applicant, since it might be seen as in the applicant's best interest for the respondent not to attend the hearing.

In most cases, when the respondent receives an order and complains they were not aware of the application or hearing, they can file a motion to set aside the order. This results in the order being stayed and a new hearing being scheduled, costing the applicant and the Tribunal time and expense. In cases where a set aside of the order is not an option, the respondent is required to pay $75 to have the order reviewed.

The need for the Tribunal to serve these notices would be even greater if the default order process were to be eliminated. Currently, if an applicant does not properly serve the application and notice of hearing, and a default order is issued, the respondent may request, at no cost, that the order be set aside. However, if the default process were eliminated, there would be no set aside process. The only way for the respondent to be heard would be to request that the order be reviewed and pay the review fee, which might be difficult for many tenants.

Options for consideration:

A. Require the Tribunal to serve the notices of hearing on respondents.

The applicant would still be required to serve a copy of the application on the respondent. Making the Tribunal responsible for service of the notice of hearing would help ensure that respondents were made aware of hearings. It might reduce the number of set asides as well as the time spent in hearings determining whether the respondent was adequately informed.

However, this option generally increases the time for service since many landlords personally serve the documents to the respondents on the same day that the application is filed, whereas it would take up to five days for the respondent to receive copies mailed by the Tribunal. The increased service time would result in delayed hearings and increased resolution time, which would have grave implications for emergency applications (i.e., when the tenant has been illegally locked out). There might also be an increased number of respondents who do not receive the notice of hearing in areas where there are mailing address irregularities (hand delivery is more reliable in these areas).

B. Require the Tribunal to notify respondents that an application has been filed and a hearing scheduled, but require the applicant to serve the actual notice of hearing and the application.

In this option the applicant would still be required to serve the notice of hearing and the application on the respondent, but the Tribunal would also send out an information notice advising the respondent that the Tribunal had received an application, and that a hearing had been scheduled. The notice would also state that they should call the Tribunal if they do not receive the necessary documents from the applicant.

This would ensure that respondents were made aware of applications and hearings, and that may avoid many of the problems associated with the Tribunal being responsible for service. As with option A, this option might also reduce the number of requests to set aside and the time currently spent in hearings determining whether the respondent was adequately informed.

However, having the Tribunal send out information notices could raise questions about the best use of taxpayers' money and about the necessity of respondents receiving more than one notice. As well, it could be confusing for respondents to receive two documents about the same proceeding.

Making landlords and tenants aware of their rights and responsibilities

To ensure that tenants and landlords are aware of their rights and responsibilities, the government could require that landlords of multi-unit buildings post a document outlining these rights and responsibilities in a conspicuous place on the rental property.

Background:

Previous legislation required landlords to post a summary of specific sections of the law that described the rights and obligations of tenants and landlords. This requirement was limited to multi-unit buildings, and the document had to be posted in a common area. This requirement was difficult to enforce, and landlords needed to be aware of any amendments to any section so they could ensure the most recent version was posted. It was sometimes difficult for landlords to comply with this requirement because of vandalism.

A requirement to post this type of document was not included in the *Tenant Protection Act, 1997* (TPA).

Questions for consideration:

1. Should landlords be required to post a document that is easy to see in rental buildings, giving information about the rights and responsibilities of landlords and tenants?

A. Yes. Require landlords to post information about the rights and responsibilities of tenants and landlords.

This option means that the majority of tenants would have access to this information in their buildings.

B. No. Do not require landlords to post information about rights and responsibilities of tenants and landlords.

With this option, tenants would not have access to the information in their buildings. However, it is possible that many tenants would not read the document anyway, but could continue to access all necessary information through the Ontario Rental Housing Tribunal (the Tribunal).

2. What should the text of the document be?

A. A copy of the sections of the new legislation that describe the rights and responsibilities of tenants and landlords.

With this option, landlords would be responsible for ensuring that they replace the excerpt with an updated version, should there be subsequent amendments to the section.

This option would ensure that the relevant parts of the legislation are available in a readily accessible location. However, some tenants might find the legal nature of the text difficult to understand.

B. A plain-language summary of the sections of the new legislation that describes the rights and responsibilities of tenants and landlords.

With this option, the government would issue an official summary in clear language.

This option would make the text more readable and user-friendly.

The drawback of options A and B is that each would require a multiple-page document. This is likely too long to be effective in posted form.

C. A brief explanation of how the Ontario Rental Housing Tribunal helps tenants and landlords, and contact information such as the phone number and website.

This option would produce the shortest and simplest document. Tenants would still be made aware of how to access the information, and could contact the Tribunal for assistance with specific issues.

3. What types of rental buildings should be subject to the posting requirement?

Posting the document in all rental buildings would reach the greatest number of tenants. However, this could be difficult in non purpose-built rental buildings (such as basement apartments, rental units over stores, duplexes, rented houses, etc.) where there is often no lobby or other common area. For these types of rental buildings, landlords could be required to give the tenant a paper version.

Demolition and conversion

The government has stated it wants to ensure that municipalities with low vacancy rates have the right to protect existing rental housing from unreasonable demolition or conversion to condominiums.

Many municipalities have sought control over the demolition and conversion of existing rental housing stock in order to protect affordable rental housing. They argue that current higher vacancy rates may be temporary, caused by factors such as a shift of renter households to ownership or by higher rents that have reduced the number of new renter households. They believe there is a need to protect existing rental housing stock since little new rental housing is being built, particularly at affordable rent levels.

However, many landlords and developers argue that controls on demolitions and conversions restrict the "best and highest use of land." They are against restrictions that could prevent them from earning a better rate of return on the land and structure in another use (for example, as a condominium or redeveloped as a commercial space.)

Background:

Rental Housing Protection Act

The former *Rental Housing Protection Act* (RHPA), enacted in 1986, required landlords to apply to their municipal council for approval if they wanted to convert, demolish or make major renovations to a rental property. In general, these rules applied to buildings with five or more units in municipalities with a population greater than 50,000 and in the case of a proposed conversion to condominium these rules applied to all rental properties in all municipalities. The RHPA was repealed in June 1998 as the *Tenant Protection Act, 1997* (TPA) came into effect. The TPA does not include a municipal approval process for conversions and demolitions.

In demolition situations the TPA requires landlords to provide compensation to tenants that is equal to three months rent or to provide another apartment for the tenant to live in that the tenant accepts (this applies to buildings with five or more units). In conversion situations, the TPA states that a tenant can continue to live in their rental unit for their entire life after the building becomes a condominium, and the tenant has the right of first refusal to purchase their apartment if it is sold.

Official Plan policies

Many municipalities in Ontario have policies governing condominium conversions and/or demolitions. Generally, these policies are part of the Official Plans of those municipalities. Subsection 16 (1) (a) of the provincial *Planning Act* provides that an official plan shall contain "goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it..."

Official Plan policies use a range of measures or criteria to evaluate proposed conversions or demolitions. These measures or criteria could include: vacancy rate thresholds that need to be met, limitations on buildings with high rent levels, requirements for replacement rental units of a similar type, consideration of the impact on the mix of housing options available, requirements for public meetings and requirements for the approval of the current tenants.

Recently, after lengthy legal proceedings, the Court of Appeal for Ontario found that municipalities have the authority to set policies in their Official Plans concerning conversions to condominium and the demolition of rental housing.

Although the Court of Appeal decision has clarified the authority of municipalities in this area, there continue to be situations where rental housing is not protected by policies in Official Plans. This is the case in situations where no planning approvals are needed. For example, the demolition of a five-storey rental residential building that is replaced by a five-storey co-ownership residential building may not need municipal planning approval. To be able to preserve rental housing in these situations, municipalities would need to be given authority through provincial legislation.

Status of conversion to condominium, demolition and new rental housing in Toronto

In the City of Toronto, since the repeal of the RHPA there have been 298 rental units (in six properties) that have been approved by Council for conversion to condominium. These were conversions at the high end of the market. Recently the Ontario Municipal Board (OMB), the tribunal that hears appeals of municipal planning decisions, approved the conversion to condominium of 500 rental units in Toronto that the City of Toronto Council had previously refused. As of March 1, 2004, there were outstanding applications in Toronto for the conversion of 1,203 rental units that were refused by Council and appealed to the OMB.

Since the repeal of the RHPA, there have been 10 applications to the Council to demolish 1,346 units in Toronto. The Council has tried to retain these units, or have as many as possible replaced. The City of Toronto expects that of these 1,346 units, 204 will be retained and 784 replaced – resulting in a net loss of 358 units.

In the period from 1998-2002 there were 1,566 new rental units added to the City's rental stock. This number falls short of the 2,000 new low-rent units that the Golden Report on Homelessness estimated that the City of Toronto needs annually to meet new demand.

Views from Ontario communities

At this point, it is not known whether potential condominium conversions or demolitions are a significant issue in communities across Ontario. In order to develop legislation that would, if passed, reflect the realities for all communities, the government wants to hear about local experiences with conversion and demolition of rental housing, and views on the appropriate approach to regulation based on those experiences.

Long-term leases

Another form of conversion, which may be considered for regulation, is conversion to long-term lease. A long-term lease is a form of housing tenure that occupies a grey area between rental and ownership. It involves the owner of a property giving another person the right to occupy the property for a long period (such as 49 years or more), in return for an up-front payment and monthly maintenance fee payments. The owner of a building containing month-to-month rental apartments might attempt to avoid the rules that apply to condominium conversions by instead "converting" his/her building into long-term lease apartments.

1. Which of the following should be used to ensure that municipalities with low vacancy rates are able to protect existing rental housing from unreasonable demolition or conversion to condominiums?

A. Bring in laws requiring cities and towns to have an approval process for demolition or conversion, based on rules set out by the provincial government.

The government could introduce provincial legislation similar to the former RHPA, which would mandate a municipal approval process based on provincial criteria. These criteria could include a sustained vacancy rate threshold (e.g., less than 3 per cent for three years) and/or other criteria, such as the percentage of tenants in core need.[4] However, in determining a threshold, there are problems with the reliability and scope of vacancy rate data.[5] In addition, the adequacy of rental housing supply, particularly for low-income households, is affected by a number of factors and can change significantly in a short timeframe.

The government could also introduce rules that affected municipalities would consider before approving conversions or demolitions of rental housing, similar to the rules in the former RHPA. These include requiring that the property owner provide replacement rental units at similar rents, permitting demolitions if the property is structurally unsound or allowing a conversion or demolition if the

4. Core need is a term used by the Canada Mortgage and Housing Corporation to describe households spending more than 30 per cent of their income for a "suitable, adequate and median rental unit in their community."
5. Please see chapter on 'Regional Decontrol' for further information on this issue.

Council decides that the proposal will not adversely affect the supply of affordable rental housing in the municipality. It may also be appropriate to limit the mandated municipal approval process to buildings above a certain size (such as the limitation to buildings containing five or more units under previous legislation), to allow the process to be effectively administered and to only include conversions and demolitions that could have a significant effect on the rental housing stock.

A mandated municipal approval process would help municipalities with low vacancy rates protect the existing rental housing stock. This approach would also enable a comprehensive, long-term approach to the issue. However, this option could not be implemented immediately, due to the preceding policy development and legislative approvals process. There might be some short-term losses to the stock of rental housing as a result. As well, some municipalities might object to a mandated process, if the local Council did not regard the rental housing supply to be an issue in their community and considered such a process to be unnecessary red tape. However, by mandating a process, the government could ensure that local councils give proper consideration to preserving the supply of rental housing before permitting conversion or demolition.

B. Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on rules set out by the provincial government.

The government could introduce provincial legislation that could, if passed, make a municipal approval process optional, subject to certain provincial criteria. These criteria could include a sustained vacancy rate threshold (e.g., less than 3 per cent for three years); and/or other criteria such as the percentage of tenants in core need. It may also be appropriate to limit the optional municipal approval process to buildings above a certain size, (such as the limitation to buildings containing five or more units under previous legislation), to allow the process to be effectively administered and to only include conversions and demolitions that could have a significant effect on the rental housing stock.

As discussed above, proposed rules set out by the provincial government could include requiring that the property owner provide replacement rental units at similar rents, permitting demolitions if the property is structurally unsound, or allowing a conversion or demolition if the Council decides that the proposal will not adversely affect the supply of affordable rental housing in the municipality.

This, again, would help municipalities with low vacancy rates protect the existing rental housing stock. Rather than requiring a municipal approvals process in all urban centres, this option would be more flexible and would permit communities greater control over how they develop. Again, there would be the possibility for short-term losses in some urban centres while longer-term rental housing protection was developed.

C. Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on their own rules.

The government could introduce provincial legislation allowing municipalities to set their own criteria for controlling the demolition and conversion of rental stock. Similar to option B, a municipality would have the choice whether to control demolition and conversion. However, in this option, the municipality could also determine the vacancy rate threshold or any other conditions.

This option would allow municipalities to implement approval processes that meet the specific needs and conditions of their rental markets. Municipalities are aware of local housing needs and may be in the best position to make these decisions.

Further, this option could enhance the authority of municipalities beyond what the courts have given them. Municipalities could establish controls over aspects such as long-term leases and other situations where currently no planning approvals are needed.

However, this option could give municipalities the ability to effectively prohibit demolitions and conversions in all circumstances, and depending on the rental market, this could discourage new investment in the region. Municipal policies on this issue could vary widely across the province — ranging from no approval process to effectively a complete prohibition on demolition and conversion. This might create inconsistency and lead to confusion for developers, landlords and tenants.

2. Should there be a temporary freeze on conversions and demolitions, protecting all rental properties until the government decides on a permanent solution?

To deal with potential short-term losses of rental stock in some urban centres while developing legislation, the government could introduce legislation that would, if passed, establish a moratorium on conversions and demolitions (except in specific situations to be defined, such as where demolition is necessary to ensure public safety) until long-term comprehensive rental housing protection legislation was in place. This approach would send a strong public message about supporting municipalities' efforts to protect the stock of rental housing. However, landlords and developers might view this as interference in their ability to manage their investments/assets. A moratorium or freeze could be implemented with any of the other options.

Other issues and concerns

The preceding chapters contain options for implementing the government's commitments for proposed residential tenancy reform. We are seeking input from you on how to make these initiatives work.

In addition, we are also interested in hearing about any other issues or concerns you may have. We want to know how you feel the system is working, whether you think the rules are fair and how you think things can be improved.

Below are examples of some comments from constituents and pre-consultation meetings with stakeholders. If these are concerns of yours, we invite you to make your views known. If you have other concerns or suggestions, we want to hear them too.

Ontario Rental Housing Tribunal processes

We have heard concerns and suggestions about the effectiveness of the Ontario Rental Housing Tribunal (the Tribunal). The Tribunal was established to be a more efficient and approachable adjudicative body than the courts. In 2002-2003, approximately 70,000 applications were filed, of which 60,000 related to termination of tenancies. 29,000 of these cases went to a hearing. The average waiting time between filing an application and the hearing was 16-20 days (excluding applications for above-guideline rent increases). The Tribunal has provided a necessary service for both landlord and tenants. However, concerns about the following issues have been raised, and we welcome your comments and suggestions on these and any other issues:

- fees
- public availability of orders
- access to mediation
- process for evictions and recovery of rent arrears
- opportunity for tenants to state their case at hearings.

These fees are charged by the Tribunal in recognition that the service being provided applies specifically to the landlord or tenant, and is not of a general benefit to the public. However, the fees only cover some of the Tribunal's costs. Should a greater share of the Tribunal's costs be recovered through fees? This would benefit taxpayers as a whole, because their tax dollars would not need to pay for services sought by specific landlords and tenants. However, higher fees could be prohibitive for some landlords and tenants. In addition, some landlords argue that the cost for an eviction application (usually due to non-payment of rent) is already high, considering the additional cost of Sheriff's fees. Further, high fees for evictions can be difficult for tenants, as the tenant is required to pay the application fee, as well as any arrears of rent, in order to void an eviction order.

We would also like to hear your views on making information contained in Tribunal applications and orders more widely available to the public. We have heard from landlords and tenants that this information would be helpful in making decisions about whether to file applications with the Tribunal, or in preparing for hearings before the Tribunal. Public interest in making this information more available will have to be balanced with legislative requirements relating to privacy and administrative proceedings. We would like your input on ways to make this possible.

Long-term sustainability of rent banks

The government has recently announced a provincial rent bank program, which has endowed municipal rent banks (operated by Consolidated Municipal Service Managers) with $10 million. Rent banks help keep people in their homes by providing short-term assistance where the tenant may have been unable to pay rent. This provides a benefit to both tenants and landlords, as it prevents the disruption to both tenants and landlords caused by eviction.

It is anticipated that in the long term, rent banks could be a sustainable means of providing assistance. We are looking for ideas on how this can be accomplished. One example is through "insurance funds." This means tenants and/or landlords could pay a very small premium for long-term protection against short-term default of rent payments.

We would like to hear your views on this idea, and how to ensure that rent banks can be made sustainable.

Mobile homes

Some mobile home park tenants feel that the annual rent increase guideline is not appropriate for mobile homes. It reflects average operating cost changes for rental apartments, rather than the operating cost changes for a mobile home site and associated costs related to park infrastructure and services. In many cases, mobile home park tenants pay for their own utilities, and they maintain that utility costs should not be reflected in their annual rent increases. Some residents have suggested that there should be a separate guideline for mobile home parks, which would more accurately reflect operating cost changes experienced by the park owners.

In addition, some mobile home park tenants have argued that it is not fair that a landlord of a mobile home park can increase the rent for a new tenant of the park by $50. They feel that since increasing the rent makes it harder for mobile home park tenants to sell their mobile homes, landlords should not be allowed to increase the rent for new tenants.

Energy savings through sub-metering

It has been argued that electricity consumption in apartment buildings could be reduced by as much as 30 per cent with the installation of individual electricity meters for each rental unit. Right now, 90 per cent of apartment buildings are master-metered, which means landlords purchase electricity for the apartment building and then provide it to their tenants as a service included in the rent. Since tenants do not pay based on their consumption, they have no financial incentive to conserve electricity.

Energy management companies and landlords have proposed that the government could encourage sub-metering as an energy savings initiative. In this proposal, landlords would continue to purchase the electricity for their building from their local distributor, and then charge tenants for their actual consumption. Rents would be revised to reflect this change. In most cases, the amount of energy that tenants consume would go down. However, there would be added service charges to cover the cost of billing, meter reading and maintenance, so total electricity charges would not go down proportionately.

As an alternative to landlord administered sub-metering, Ontario Energy Board licensed Local Distribution Companies (LDC's) may be interested in providing the sub-metering and billing service to apartment buildings in their territories. Tenants would then become LDC customers and be subject to their regulated rates and service charges.

A major challenge in encouraging the installation of individual meters is to ensure that tenants do not encounter high account or user fees (these costs would be above the cost of the electricity) that prevent tenants from financially benefiting from their conservation efforts.

The government is currently reviewing its energy policies and, as part of this review, is looking at additional measures to specifically support conservation, including different types of metering programs and the regulatory oversight of metering and billing.

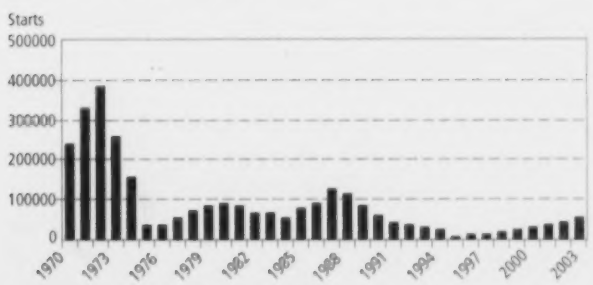
Appendix A:
Overview of Ontario's private rental market

Approximately 1.1 million tenant households rely on the private rental market to meet their housing needs. Another 250,000 renter households occupy social housing units.

Rental production

The development of new rental housing, since the early 1970s, has been generally unattractive to the private sector as returns on alternative investments, including condominiums, have been higher. New private rental construction starts dropped to 550 units in 1995, the lowest recorded level, having peaked at almost 40,000 units in 1972. The changes in the federal tax treatment of rental investment in the early 1970s were one of the main reasons for the decline in rental starts[6]. The effect of removing some of the barriers to new private rental housing and making improvements to the business conditions for rental housing is beginning to be seen. Private rental housing starts in Ontario, while continuing to be low by historical standards, have increased to nearly 4,800 units in 2003 compared to 1995.

Private Rental Starts in Ontario



Source: MMAH estimates based on CMHC data

Secondary rental market

Conventional purpose built rental production is supplemented by the secondary sector. The secondary rental market, which includes tenant-occupied single, semi and row dwellings, rented condominium units, accessory apartments such as self-contained basement units and flats (legal and illegal) and apartments over stores, contain some of the more affordable rental housing. The secondary rental market is an important component of overall rental supply.

A 1998 report by Starr Consulting Inc., titled *The Secondary Rental Market*, found that the secondary sector represented 36 per cent of the overall rental supply in the City of Toronto, 73 per cent in the suburban GTA, and between 43 per cent to 55 per cent in other centres like Ottawa, Hamilton, Kitchener-Waterloo, Windsor and Sudbury. It is estimated that more than 100,000 houses in Ontario have basement apartments and other forms of accessory units.

Another study by Canada Mortgage and Housing Corporation (CMHC) on rented condominiums estimated that 19 per cent (33,838 units) of all condominiums in the GTA were rented out in 2003.

The secondary rental market is, however, a less secure source of rental housing than purpose-built rental housing. The sustained availability of secondary rental market housing depends heavily on economic and real estate conditions and thus cannot be counted on for long-term supply.

Vacancy rates

Vacancy rates for private rental units have increased significantly over the past two years. According to CMHC, Ontario had an average vacancy rate of 3.5 per cent in October 2003, compared to 2.7 per cent in October 2002 and 1.7 per cent in 2000. CMHC's survey is not conducted in areas with a population of less than 10,000 nor does it include units in the secondary rental market. Vacancy rates in Toronto and Ottawa Census Metropolitan Areas (CMAs) were 3.8 per cent and 2.9 per cent, respectively, compared to 2.5 per cent and 1.9 per cent, respectively, in 2002. Other major urban centres also had relatively high vacancy rates including Windsor (4.3 per cent), Kitchener (3.2 per cent), Hamilton (3.0 per cent) and St. Catharines (2.7 per cent). Kingston has a relatively lower vacancy rate (1.9 per cent in 2003). A vacancy rate of 2-3 per cent is conventionally considered to be representative of a balanced market.

6. Lampert, Greg. (1995). Discussion Paper: *The Challenge of Encouraging Investment in New Rental Housing in Ontario.* Ministry of Municipal Affairs and Housing.

Table 1: Vacancy Rates in Ontario's CMAs (All bedroom types)
Private Rental Apartment Buildings of Three Units & Over

Ontario CMAs	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
						(In per cent)							
Greater Sudbury	0.7	2.5	3.8	4.3	6.0	6.8	7.2	9.4	11.1	7.7	5.7	5.1	3.6
Hamilton	1.6	2.3	2.7	2.7	2.0	2.2	3.1	3.2	1.9	1.7	1.3	1.6	3.0
Kingston	1.5	1.9	2.5	2.9	3.2	4.2	5.3	5.4	3.4	1.8	1.5	0.9	1.9
Kitchener	4.3	4.4	4.3	2.8	2.2	1.8	1.9	1.5	1.0	0.7	0.9	2.3	3.2
London	3.9	3.4	3.8	4.1	4.3	6.0	5.1	4.5	3.5	2.2	1.6	2.0	2.1
Oshawa	3.4	6.1	4.6	3.4	2.7	3.7	2.4	2.0	1.7	1.7	1.3	2.3	2.9
Ottawa	0.8	1.3	1.8	2.6	3.8	4.9	4.2	2.1	0.7	0.2	0.8	1.9	2.9
St. Catharines – Niagara	2.9	3.4	4.9	5.8	5.2	5.6	5.4	4.6	3.2	2.6	1.9	2.4	2.7
Thunder Bay	1.0	2.5	2.7	4.1	6.2	5.6	7.7	9.3	7.5	5.8	5.8	4.7	3.3
Toronto	1.8	2.2	2.0	1.2	0.8	1.2	0.8	0.8	0.9	0.6	0.9	2.5	3.8
Windsor	3.3	3.3	2.7	1.6	1.8	2.8	4.5	4.3	2.7	1.9	2.9	3.9	4.3
Ontario	**2.2**	**2.6**	**2.7**	**2.4**	**3.0**	**3.0**	**2.8**	**2.6**	**2.1**	**1.6**	**1.7**	**2.7**	**3.5**

Source: CMHC Rental Market Survey conducted every year in October

The primary reason for the increases in vacancy rates has been a decline in rental demand, not a high increase in new supply. A number of renter households have taken advantage of the historically low mortgage rates and have made the transition into homeownership. There has also been a dip in net migration in 2003 and in youth employment (age cohort of 15-24), discouraging the formation of new renter households (both these groups are dominant renter categories).

However, the trend of rising vacancy rates over the past two years may be temporary. Vacancy rates tend to be cyclical. The early and mid-1990s witnessed the same trend, when vacancy rates rose above 3 per cent in many urban areas. This was followed by a period of record low vacancies until the end of the decade, before the current easing — which is expected to continue for a few more years.

Demand for rental units is likely to rise after a few years. The formation of new renter households will increase with growth in youth employment as the economy improves (many persons in the age group of 15-24 will probably move out of their parents' home and into separate residences). Also, as mortgage rates start to rise after some time, the number of renters moving into homeownership will decline. Immigration levels in Ontario are not projected to rise in the next two years; however, if there is an increase, this could result in higher demand for rental units.

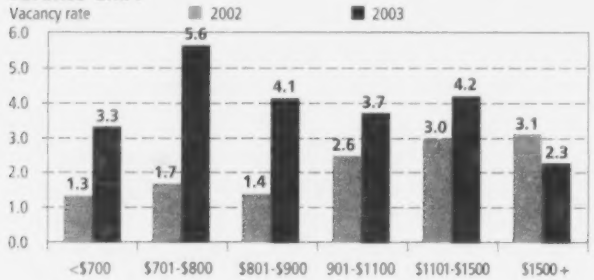
Vacancy rates in low rent units

In the past several years, any easing in the rental market conditions in the larger centres generally occurred at the higher rent levels. Here, the increases in income and lower interest rates (compared to early 1990s) made home ownership attainable and preferable for many renter households, especially those paying high rents. The more affordable and low rent units remained in tight supply, with the vacancy rates for these units generally remaining low. However, in the 2003 survey, while vacancy rates rose across the rent spectrum in several larger urban centres, the vacancy rates in units with lower rents (across all bedroom types) had higher increases than the higher rent units.

In Toronto, in the two-bedroom category, the vacancy rate in 2003 for units renting for less than $700 increased to 3.3 per cent, and for units between $701-$800 increased to 5.6 per cent. (The increases were 1.3 per cent and 1.7

per cent, respectively, in 2002). In comparison, for units that rented above $1,500, the vacancy rate decreased from 3.1 per cent in 2002 to 2.3 per cent in 2003.

Vacancy rates by rent ranges for 2 bedroom units Toronto CMA



Source: 2003 Rental Market Survey CHMC
2002 overall vacancy rate= 2.5%
2003 overall vacancy rate= 3.8%

The new trend of higher vacancies in low-rent units across the rent spectrum is also visible in several other CMAs like St. Catharines-Niagara, Thunder Bay, Sudbury, Oshawa, Hamilton and London.

The primary reason for the higher vacancy rates in units with lower rents and vice versa seems to be related to both quality and affordability issues. The 2003 rental market survey data also show that vacancy rates were the highest in older buildings with fewer amenities. Moreover, not all renters (especially those at the lower end of the rental spectrum) were in a position to move into home ownership. With higher vacancies at almost all rent levels and negligible rent increases, it is likely that many of these renters moved into better quality rental accommodation at a slightly higher cost. This helped free up units at the lower end of the rental market. With a drop in immigration flows in 2003, many of these units remained vacant, resulting in high vacancy rates.

Average rents

Over the past two decades, rents have generally risen in line with inflation. However, with the recent increases in vacancy rates, rent increases in 2003 have moderated and are well below inflation. High vacancy rates are forcing landlords to offer lower rents (especially for units that have not been renovated) in a bid to attract new tenants, and refrain from imposing any rent increases to retain their existing tenants. Also, most rents are now at market levels, as a result of the *Tenant Protection Act* having been in effect for about five years.

According to CMHC, Ontario's average two-bedroom apartment rent in October 2003 remained relatively unchanged, edging up only 0.3 per cent, from October 2002 — much lower than the 2003 inflation rate (2.7 per cent) and the rent increase guideline (2.9 per cent). Toronto rents, in fact, decreased in 2003 for the first time since the mid-1970s. In many of the other major centres like Ottawa, Kitchener, Windsor and Hamilton rent increases between 2002 and 2003 were either negligible or very minor.

This current softening in rents is in contrast to the high rent increases in the late 1990s, especially after the introduction of the *Tenant Protection Act, 1997* and partial decontrol of rents in 1998. Under the new law, landlords were allowed to increase the asking rent on a vacant unit without legislative restriction. As a result, the increase in average rents was much higher than inflation. Between 1996 and 2001, the average annual increase in rents in many of Ontario's larger urban centres was higher than the average rate of inflation (2.2 per cent) in that period. Most of the high rent increases were concentrated in Southern Ontario, especially around the Golden Horseshoe area, as well as Ottawa.

Rental housing affordability

While the rental market (in terms of vacancy rates) seems to be improving, some renter households still face problems in accessing safe, adequate and affordable accommodation. Housing affordability for renters, especially those with low incomes, continues to be of concern.

Core need

One of the widely used housing affordability indicators is CMHC's Core Housing Need, which is based on Statistics Canada's Census data.

- ***Core housing need*** households are those occupying housing who falls below standards for adequacy, suitability or affordability and that cannot afford to pay the median rent of alternative local market housing that meets all three standards.
- ***Adequate*** dwellings are those reported by their residents as not requiring major repairs.
- ***Suitable***[7] dwellings have enough bedrooms for the size and make-up of the occupying household, according to National Occupancy Standard (NOS) requirements.
- ***Affordable*** dwellings cost less than 30 per cent of before-tax household income.

CMHC data reveals that in 1996, 449,510 households (36 per cent) were classified as being in core housing need, compared to 280,165 households (24 per cent) in 1991. The latest core need data based on the 2001 Census are currently unavailable, but based on the analysis of other affordability indicators and survey data, it is expected that the economic and employment growth of the late 1990s has led to a slight improvement in housing affordability in 2001 compared to 1996. However, the number of households in core need is still expected to be higher than in 1991.

Preliminary analysis on affordability in terms of proportion of gross household income spent on shelter show the same results. The number of households paying more than 30 per cent of their (gross) incomes grew significantly from 356,095 (29 per cent of renter households) in 1991 to 486,325 households in 1996 (38 per cent of renter households). Since then, economic, employment and income growth in the late 1990s has resulted in an increase in affordability for Ontario renters. However, this increase is marginal, with 37 per cent of renter households (458,040) spending more than 30 per cent of their income on shelter in 2001.

In addition, nearly 20 per cent of Ontario's renter households continued to pay more than 50 per cent of their incomes on rent in 2001. These households are considered to have serious affordability problems and are at significant risk of becoming homeless.

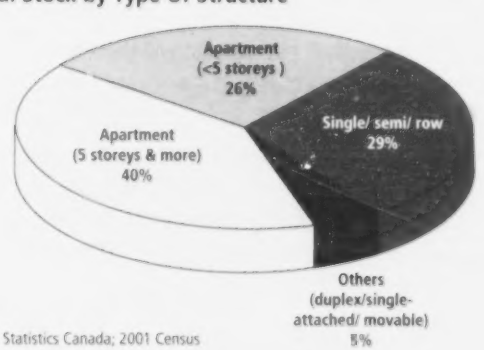
In Toronto CMA, 37 per cent of renter households (201,620) faced affordability problems in 2001, compared to 38 per cent in 1996.

Rental stock

There are an estimated 4.21 million housing units in Ontario, of which about 1.35 million units — or approximately one in three of all housing units — are rented.

Roughly 40 per cent of the rental units are found in high-rise apartment structures (defined as having five storeys or more). Low-rise apartment structures (less than five storeys) account for about 26 per cent of the rental stock. The remaining 34 per cent consists of single-detached, semi-detached, row, duplex and single-attached houses.

Rental Stock by Type Of Structure



Source: Statistics Canada; 2001 Census

7. According to the National Occupancy Standard, enough bedrooms means one bedroom for each:
   - Cohabitating adult couple
   - Unattached household member 18 years of age and over
   - Same-sex pair of children under age 18
   - Additional boy/girl in the family, unless there are two opposite sex siblings under 5 years of age, in which case they are expected to share a bedroom
   - However, a household of one individual can occupy a bachelor unit (i.e., no bedroom)

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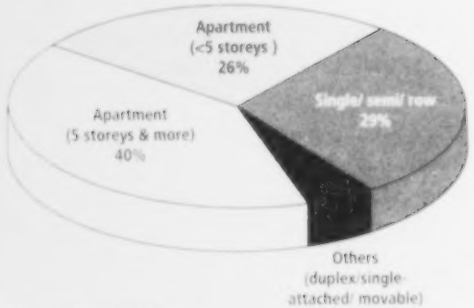

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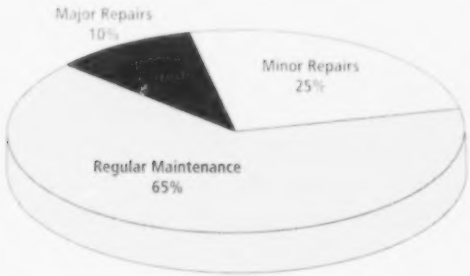
   - However, a household of one individual can occupy a bachelor unit (i.e. no bedroom).

Condition of rental stock

It is estimated that roughly 35 per cent of the Ontario's rental stock is in need of either minor or major repairs (approximately 140,000 rental dwellings in need of major repairs and 343,000 in need of minor repairs in 2001). It is important to note that this estimate is based on Census results and collected from individual household responses and not technical inspection of dwellings.

The proportion of Ontario's rental stock that requires repairs (major and minor) has remained the same over the past few Census years and is also similar to the proportions of rental units requiring repairs at the national and (other) provincial levels.

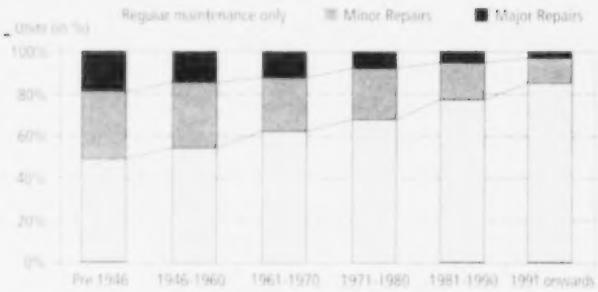
Condition of Ontario's Rental Stock



Source: Statistics Canada, 2001 Census

Of particular concern is the condition of the many high-rise residential projects built during the rental housing construction boom of the late 1960s and early 1970s. These buildings are due for major systems overhauls, and possibly some major structural repairs. Also, some of the neediest renters live in rooming and boarding houses. Independent studies have estimated that perhaps 20,000 of these units are in substandard buildings.

Need for Repair by Age of Stock



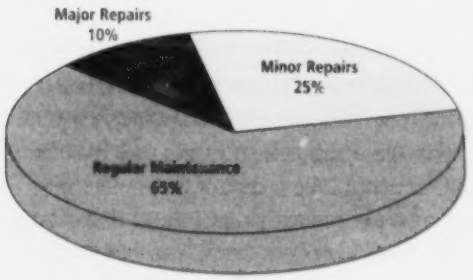
Source: Statistics Canada, 2001 Census

Condition of rental stock

It is estimated that roughly 35 per cent of the Ontario's rental stock is in need of either minor or major repairs (approximately 140,000 rental dwellings in need of major repairs and 343,000 in need of minor repairs in 2001). It is important to note that this estimate is based on Census results and collected from individual household responses and not technical inspection of dwellings.

The proportion of Ontario's rental stock that requires repairs (major and minor) has remained the same over the past few Census years and is also similar to the proportions of rental units requiring repairs at the national and (other) provincial levels.

Condition of Ontario's Rental Stock



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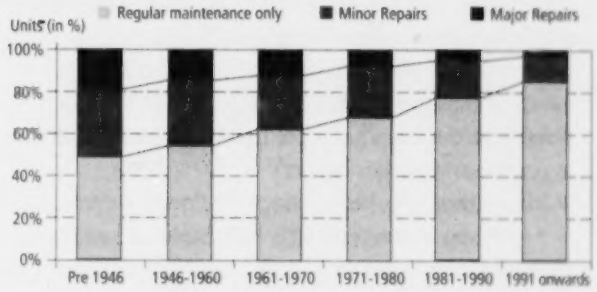

Source: Statistics Canada, 2001 Census

Questionnaire

HAVE YOUR SAY: The Tenant Protection Act

The McGuinty government wants to make sure that any proposed legislation for rental housing provides balanced protection for landlords and tenants, and encourages the growth of rental housing. To make this happen, the government needs your advice on what works and what doesn't in the current legislation. Use this questionnaire to have your say. Give us your ideas on how to create a better act. The questionnaire covers a variety of issues including rents for new tenants, utility costs, dispute resolution and much more. We also plan to hold town hall meetings across the province to hear from as many people as possible. You can get more information on our website www.rentreform.ontario.ca or by calling 416-645-8082, toll-free 1-866-751-8082 or dial TTY line 1-866-220-2290.

Please take the time to complete this questionnaire. Return it to us by mail to the address below. If you need additional copies, please call Publications Ontario at 416-326-5300 or toll-free at 1-800-668-9938. If you prefer, you can complete the questionnaire online on our website. You may also send or fax any written comments to:

Residential Tenancy Reform Consultation
Ministry of Municipal Affairs and Housing
Market Housing Branch
777 Bay Street, 14th Floor
Toronto ON, M5G 2E5
Fax: 416-585-7607 or toll-free 1-888-846-8832

The deadline for completed questionnaires and comments is June 15, 2004.

Thank you for your input and for participating in this important discussion.

Your Information

You are not required to provide your name or other personally identifying information in this questionnaire. Should you wish to give us this information, we will, unless ordered by a court or tribunal, do our best to keep it confidential. If you have questions about this, please contact Ministry of Municipal Affairs and Housing at 416-645-8082 or toll-free 1-866-751-8082.

Postal Code: (Required):

Postal codes are collected to determine which areas of the province are participating in the consultation process.

Are you, or do you represent: (Required. Please circle as many as apply.)

a) a tenant

b) a landlord

c) a tenant organization

d) a landlord organization

e) other

RENTS FOR NEW TENANTS

Right now, when a tenant moves out, there are no rules about what the rent for new tenants moving in should be. A landlord can charge any amount.

For tenants who are not moving, the provincial government sets a limit on how much their rent can be increased from one year to the next (this is known as the "annual rent increase guideline"). Sometimes, landlords do not increase the rent, even when they can.

1. By how much, if at all, should a landlord be able to increase the rent when a new tenant moves in?

Circle one.

a) No increase. A new tenant should be charged the same amount as the previous tenant.

b) A landlord should be able to charge a new tenant the same rent as the previous tenant, *plus* the increase allowed by the annual rent increase guideline.

c) A landlord should be able to charge a new tenant the same rent as the previous tenant, *plus* any increases that the landlord was allowed to charge to the previous tenant but chose not to.

d) No opinion/don't know.

2. How would new tenants find out what their rent should be?

Circle one.

a) It should be up to the new tenant to contact the previous tenant to find out how much they were paying for rent.

b) Landlords should have to tell the new tenants what the previous rent was.

c) The provincial government should keep a list of the rent in every apartment and rental house that the new tenant can use to look up the previous rent.

d) No opinion/don't know.

RENT INCREASE GUIDELINE

Every year, the government sets the annual rent increase guideline (the maximum amount rents can go up each year). Right now, they start with a base of 2 per cent. Then they add an amount that reflects how much the costs of operating a building (utilities, repairs, etc.) have gone up.

If a landlord wants to increase rent by more than the guideline (to cover special costs, such as major construction), the landlord must make an application to the Ontario Rental Housing Tribunal. This is known as an Above-Guideline Increase, or AGI.

3. When the government is setting the limit for rent increases (the annual rent increase guideline) every year, how should that number be calculated?

Circle one.

a) Keep the current system of 2 per cent plus an amount for increases in building operating costs.

b) Keep the current system, but reduce the base amount from 2 per cent to 1 per cent.

c) Keep the current system, but remove the base amount altogether. Rent increases would be based only on increases in building operating costs.

d) Rent increases should be tied to the Ontario Consumer Price Index (which is the rate of inflation).

e) No opinion/don't know.

"COSTS NO LONGER BORNE" FOR UTILITY COSTS

Sometimes, landlords are allowed to charge an above-guideline increase (AGI) in a tenant's rent, because costs for utilities (heat, water and electricity) have gone up. When landlords' utility costs go down again, the landlord is not required to reduce the rent.

4. What should be done to protect tenants from continuing to pay higher rents when utility costs decrease?

Circle one.

a) Allow AGIs based on utility costs to be charged for one year only, unless the landlord can prove to the government that the utility costs have not decreased.

b) Allow AGIs based on utility costs to remain in the rent, but give tenants the right to apply for a rent reduction if these costs decrease.

c) Have the government, through the Ontario Energy Board, keep track of utility rates, and if these go down, announce a decrease in rents affected by AGIs based on utility costs.

d) No opinion/don't know.

MAINTENANCE AND RENT INCREASES

It is generally the responsibility of municipalities to enforce building standards. Inspections are conducted upon tenant request, and inspectors will enforce standards by issuing work orders.

Tenants can also apply to the Ontario Rental Housing Tribunal for relief, such as the landlord being required to do the work or reduce the rent for a period of time.

5. What should be done if landlords fail to properly maintain rental buildings?

Circle as many as apply.

a) Do not allow any rent increases if a landlord has not complied with a work order.

b) Do not allow any above-guideline rent increases if a landlord has not complied with a work order.

c) Expand what the Ontario Rental Housing Tribunal can order a landlord to do when a tenant reports inadequate maintenance. New options could include forbidding rent increases or forcing the landlord to permanently lower the rent.

d) No opinion/don't know.

REGIONAL DECONTROL

In some communities, where there is a high vacancy rate, strict rules about rent aren't always necessary. To help encourage developers to build new rental apartments, the government is looking at removing the rent controls when vacancy rates are high. This is known as "regional decontrol."

6. In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?

Circle one.

a) 3 per cent.

b) Higher than 3 per cent.

c) No opinion/don't know.

7. If a region is decontrolled what rent rules should be eliminated?

Circle one.

a) Eliminate rules around rents for new tenants, the annual rent increase guideline and above-guideline increases.

b) Eliminate rules around rents for new tenants, but keep rules around the annual rent increase guideline and above-guideline rent increases.

c) No opinion/don't know.

INTEREST ON RENT DEPOSITS

Right now, landlords can require tenants to pay one month's deposit in order to move in. Landlords must use this money for the last month the tenant lives in the rental unit. Until the tenant leaves, landlords must pay the tenant 6 per cent interest per year on the deposit.

8. What interest rate should be paid on rent deposits?

Circle one.

a) Change it to a fixed rate of 3 per cent.

b) Keep it at a fixed rate of 6 per cent.

c) Change it to a variable rate. This rate could be based on the inflation rate, or on the interest rate on a common type of investment such as a Guaranteed Investment Certificate.

d) No opinion/don't know.

DISPUTE RESOLUTION

When a landlord and tenant have a dispute, the Ontario Rental Housing Tribunal can be brought in to settle the argument.

Many disputes involve evictions. Right now, tenants who fail to pay their rent are given 14 days notice. After that, the landlord can apply to the Ontario Rental Housing Tribunal to have the tenant evicted, and the tenant has five days to respond in writing. If they do not respond, the Tribunal may issue a "default order," which means the eviction can go ahead without a hearing. This is called the default process.

9. How can the dispute resolution process be made fairer?

Circle one.

a) Remove the default process.

b) Make changes to the default process, such as giving tenants longer than five days to respond, allowing tenants to respond by phone or e-mail (instead of only in writing), or giving tenants more opportunities to argue against the eviction order.

c) No opinion/don't know.

MAKING LANDLORDS AND TENANTS AWARE OF THEIR RIGHTS AND RESPONSIBILITIES

10. Should landlords be required to post a document that is easy to see in rental buildings, giving information about the rights and responsibilities of landlords and tenants?

Circle one.

a) Yes.

b) No.

c) No opinion/don't know.

DEMOLITION AND CONVERSION

In cities and towns where vacancy rates are low, there is a need to make sure that rental apartments are not unreasonably demolished or converted into condominiums.

11. Which of the following should be used to ensure that municipalities with low vacancy rates are able to protect existing rental housing from unreasonable demolition or conversion to condominiums?

Circle one.

a) Bring in laws requiring cities and towns to have an approval process for demolition or conversion, based on rules set out by the provincial government.

b) Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on rules set out by the provincial government.

c) Bring in laws allowing each city or town to decide whether to have an approval process for demolition or conversion, based on their own rules.

d) No opinion/don't know.

12. Any additional comments?

Mail or fax this completed questionnaire no later than June 15, 2004, to:

Residential Tenancy Reform Consultation
Ministry of Municipal Affairs and Housing
Market Housing Branch
777 Bay Street, 14th Floor
Toronto ON, M5G 2E5
Fax: 416-585-7607 or toll-free 1-888-846-8832

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